BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of:	)	
Reform of the Interstate	)	RM-8356
Access Charge Rules	)	

TO: The Commission

REPLY COMMENTS OF SOUTHWESTERN BELL TELEPHONE COMPANY

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SUMMARY[1]

Virtually all commenting parties except for the LECs' competitors agree that extensive reformation of the federal access charge plan is needed immediately, and that the USTA proposal for effecting such reform is an appropriate roadmap for the Commission to follow. No set of competitors should be allowed to hold the consumer benefits of genuine competition hostage to a game of regulatory delay. The USTA proposal is both feasible and timely, is fully justified at any of the varying levels of competition currently facing the LECs, and incorporates entirely reasonable criteria for replacing regulatory inflexibilities with the natural forces of competition in those market areas warranting such action.

The competitive nature of telecommunications services has changed rapidly in recent years. With increasing convergence of telephony and computer technologies, with strategic mergers, acquisitions, and alliances being formed at a breath-taking rate, and with pro-competitive regulatory policies in place, such as expanded network interconnection, widespread competition can be expected to develop rapidly in an ever increasing number of markets. Traditional rules and policies will no longer be effective, but rather will lead to inefficiencies and resource misallocation. Because this industry is embroiled in technological and competitive revolution, SWBT joins USTA in urging the

[1] Abbreviations in the Summary are referenced in the text.

Commission to grant USTA's Petition and expeditiously undertake the proposed rulemaking, to hear and evaluate all parties' concerns, to properly identify the relevant markets for competitive entry, and to establish the proper regulatory framework for fostering a more competitive telecommunications industry.

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Southwestern Bell Telephone Company (SWBT), by its attorneys, respectfully responds to comments filed by various parties concerning the United States Telephone Association (USTA) Petition for Rulemaking (Petition) filed September 17, 1993. Although a majority of parties filing comments see the wisdom and necessity of the USTA proposal, a limited number continue to advance their own competitive business agendas by opposing the proposal. The Commission should see that the record permits, and the public interest requires, issuance of the Notice of Proposed Rulemaking (NPRM) sought by USTA at the earliest possible date.

I. INTRODUCTION

Commentors supporting the USTA proposed rulemaking, and the USTA Petition itself, do a thorough job of explaining the need for and specific mechanics of USTA's proposed federal access charge rule changes. Therefore, SWBT will not unnecessarily burden the record further by reciting that material yet another time.

Rather, SWBT will limit these Reply Comments to refuting several of the key misrepresentations that underlie certain opposing parties' comments, thereby exposing them for the

meritless, self-serving positions that they are. First, SWBT will show that the rulemaking requested by USTA is both feasible and timely without any further delay. Second, SWBT will show that the USTA proposal is appropriate regardless of the level of Competition the LECs experience in each of their market areas. Third, SWBT will show that the USTA criteria for implementation of additional LEC regulatory flexibility (i.e, its Initial Market Area [IMA], Transitional Market Area [TMA], and Competitive Market Area [CMA] system) is completely appropriate and, indeed, essential to be consistent with this Commission's enunciated goal of facilitating greater competition in the telecommunications industry.

II. THE PROPOSED USTA NPRM IS BOTH FEASIBLE AND TIMELY.

Several parties attempt to throw roadblocks in front of the much-needed federal access reform sought by the USTA Petition, arguing that it is either infeasible, unripe, or both, at this time. However, these parties' arguments are not persuasive.

A. Absent An NPRM, Effective And Necessary Reform Will Not Occur In A Timely Manner.

The majority of commentors in this proceeding, including SWBT, have pointedly agreed that the current interstate access charge plan has outlived its usefulness. AT&T states that it "agrees with USTA and others on the need for broad-ranging reform of the Commission's access rules to bring those rules into alignment with current marketplace and technological realities."[1] MCI states that "there is clear consensus that the time is ripe for

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[1] AT&T, p. 1.

a comprehensive reform of access charges" and that "only one out of eighteen parties disagreed with the need for reform" [in the earlier comments on the National Association of Regulatory Utility Commissioners (NARUC) Petition for Notice of Inquiry].[2] Sprint points out that it has "long supported a comprehensive review of access."[3]

Yet, many of these parties press the Commission to delay further any meaningful resolution of the issues by attempting to persuade the Commission to proceed with a time-consuming Notice of Inquiry (NOI) proceeding.[4] An NOI will only serve as an inefficient waste of the Commission's and the industry's resources as already established concerns and positions are re-voiced in the public record.

As SWBT stated in its Reply Comments on NARUC's Request for a NOI Concerning Access Issues, "the Commission and the industry are already much too far along in the process of analyzing areas of needed reform, and the adverse public interest effects of continuing much longer without such reform are much too severe, to justify conducting a mere inquiry at this time."[5]

AT&T suggests that the USTA proposal should be denied because "it unnecessarily seeks to have the Commission address, in

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[2] MCI, pp. 2-3.

[3] Sprint, p. 1.

[4] For example, United, under the influence of Sprint, expressed support for an NOI to further Sprint's interest in delaying access reform for its own business advantage (United, pp. 3-10).

[5] SWBT, pp. 2-3.

a new, 'comprehensive' proceeding, issues that the Commission already is addressing (or soon will address) in existing or soon-to-be-initiated dockets."[6] Yet, as repeatedly demonstrated in recent proceedings (e.g., CC Docket No. 91-141, CC Docket No. 91-213, CC Docket No. 92-13, CC Docket No. 93-36, etc.), a coordinated solution cannot be achieved absent a unified proceeding specifically addressing the interstate access charge plan in its entirety.

Some suggest that such a proceeding should wait for the new Commission leadership to be seated.[7] Others would have the Commission delay any decision in light of the anticipated review of price cap regulation next year.[8] Incredibly, AT&T urges the Commission to continue its "rifle-shot", multiple proceedings approach to access regulation,[9] despite the obvious harms to the industry from less-than-fully coordinated Commission proceedings and constantly overlapping dockets that never seem to come into full sync with one another despite the Commission's best efforts. Although it is admittedly a big job, the Commission should not delay any longer the type of pervasive access charge review and remodeling that USTA has so perceptively suggested. Such delays simply perpetuate the existing disservice to telecommunications end users.

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[6] AT&T, p. 8.

[7] MFS, p. 3.

[8] AT&T, p. 8.

[9] Id., pp. 8-9.

The new administration has announced its intentions for the future of telecommunications in our society. Nothing proposed within the USTA filing is contrary or detrimental to those intentions. The successes of any future reviews or proceedings are in jeopardy absent effective and immediate reform of the existing federal access charge rules.

B. The Commission Has A Complete Record Upon Which To Base The NPRM Sought By USTA.

MCI would have the Commission believe that USTA's petition is premature.[10] In fact, MCI argues that "[b]y advancing to a rulemaking at this juncture, the Commission would be ignoring the viewpoints that would undoubtedly be raised by the interexchange carriers (IXCs), state Public Utility Commissions (PUCs) and the National Association of Regulatory Utility Commissioner (NARUC), various consumer and user groups, Competitive Access Providers, and other interested parties."[11]

MCI has apparently suffered a convenient lapse of memory of what has occurred to date. First, major industry participants have been investigating interstate access reform for some time. For example, Ameritech and Rochester Telephone Company have each filed petitions which included changes to the interstate access charge plan. NARUC filed a selection of alternatives to interstate access reform as an attachment to their Petition for NOI. Recently, the Commission's Common Carrier Bureau released its

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[10] MCI, p. 1,

[11] Id., p. 2.

whitepaper on interstate access reform. Further, the Commission now has before it the USTA Petition which represents an exhaustive investigation and a feasible plan for resolution of the issues surrounding the interstate access charge plan.

The entire industry, including end users, IXCs, LECs, consumer advocacy groups, state regulators and CAPs have been afforded the opportunity to participate in discussions regarding the results of these investigations. Representatives from each of these industry groups, including MCI, have developed positions and provided comments.

Second, the Commission itself has been conducting a review of interstate access service provision and rate methodologies in its efforts to enhance competition in the access marketplace under CC Docket Nos. 91-141 and 91-213. Many parties, including MCI, covering a wide range of positions and viewpoints, have filed comments as a part of each of these proceedings. Contained within the comments are the recommendations and proposals favored by these entities.

To date, all interested parties have been, and continue to be, afforded ample opportunity to further their positions. Indeed, it should be evident from a review of the Bureau's whitepaper that the Commission has already compiled an extensive record regarding access issues.

It would be ludicrous for the Commission to believe, as MCI and others have suggested, that a sufficient record does not exist for the Commission to proceed with an aggressive effort to

reform the interstate access charge plan. In view of the record developed in the aforementioned proceedings, the Commission can easily conclude that the access marketplace has changed sufficiently to warrant reform of the governing rules and regulations. Otherwise, as many commentors have indicated, the public interest will not be served.

C. The Commission's Policy Objectives Cannot Continue To Be Achieved Absent Access Reform.

The Commission's original objectives for the access charge plan included: promoting universal service, eliminating unreasonable discrimination and undue preference in rates for services, promoting efficient use of the local network, and preventing uneconomic bypass. Rules were effected which specifically addressed these objectives. However, changes within the access marketplace have undermined the ability of these rules to effectively achieve those objectives. These changes include rapidly evolving technologies, increasingly sophisticated customer needs, and, most notably, new pro-competitive directions in Commission policy. The addition of this "new" objective and the evolution of technologies and customer needs have created an environment in which some of the Commission's original objectives cannot be achieved under the current rules.

As Commission policies afford customers a wider range of competitive alternatives without enabling the incumbent provider to develop a competitive response in a timely manner, the public interest will not be served. The Commission's objective for a

competitive marketplace was adopted to allow customers to realize the inherent benefits of such a marketplace. However, if major providers cannot exercise the same freedoms enjoyed by other providers, these benefits will not result. In fact, customers may ultimately bear the costs associated with any uneconomic service providers that may become established as the result of the disparate regulatory rules in place today. This result flies in the face of the Commission's statutory obligations under the Communications Act. The Commission has a legal and social responsibility not to subject customers to this potential danger.

The Commission cannot ignore the changes that continue to occur within the access marketplace. In order to meet its statutory obligations and responsibilities, the Commission must therefore act immediately to resolve any deficiencies in its rules and regulations.

D. The USTA Proposal Would Be Appropriate Even If Access Competition Did Not Exist.

Several parties advocate that the USTA Petition should be denied because access competition does not exist. MCI states that "competition is factually not present in the access marketplace at the present time, nor will it be in place for sometime in the future."[12] MFS states that: "The supposed 'competitive threat' facing the LECs is imaginary given the LECs' continuing market

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[12] MCI, p. 2.

dominance and the existence of substantial legal and practical barriers to effective competition."[13]

The point that these and other parties are missing is that the USTA Petition proposes to match the appropriate level of regulatory oversight to the level of competition in individual market areas. The result is that highly competitive markets receive lessened oversight while areas with little competition remain under full regulatory scrutiny. Thus, even if the access marketplace has as little competition as these parties suggest, appropriate regulatory oversight would be applied to all markets under the USTA proposal. This added dimension ensures that balanced competition occurs in all markets regardless of the level of competition within any one of them. USTA's proposal establishes a practical framework for effective regulation.

E. The USTA Proposal Does Not Seek To Deregulate Services.

Several parties decry that the USTA proposal amounts to "deregulation" of the access marketplace.[14] This contention completely distorts the concepts embodied in the proposal and is grossly inaccurate. USTA has not proposed deregulation of any LEC-provided services. All services offered by LECs under the USTA proposal would continue to be regulated under Title II of the Communications Act. Even services offered in CMAs would not be deregulated under the proposal. Services offered in IMAs and TMAs

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[13] MFS, p. 5.

[14] Comptel, p.10; Hyperion, p. 12; ITAA, p. 11; MFS, p. 8; and, Sprint, p. 10.

would continue to be price-regulated under price cap regulation. Some commentors seem concerned that LECs would be free to price services and offer customer specific proposals without any safeguards against anticompetitive behavior. This is quite simply not the case. As it is today, the Commission would have full authority to investigate rates, terms, and conditions, and the complaint process would still be intact. Thus, regulatory safeguards would still be in place, to protect the public interest.

III. THE CURRENT NATURE AND LEVEL OF COMPETITION FACED BY LECS IS A MATTER OF FACT AND THE COMMISSION SHOULD NOT FALL VICTIM TO THE SELF-SERVING SCHEMES OF SOME COMMENTORS.

A. The Continuing Development Of Competition

A common thread underlying much of the opposition to the USTA Petition is the mistaken belief that "competition is factually not present in the access marketplace at the present time, nor will it be in place for sometime in the future."[15] This simply is not true. MCI recognizes on the very next page of its comments that competition is on the rise in "selected geographical areas."[16] It further recognizes that the combined effects of this competition and technological change "is rendering obsolete the FCC's Part 61

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[15] MCI, p. 2.

[16] Id., p. 3.

and part 29 rules for establishing the rate structure for access and for developing access charge rate levels."[17]

Contrary to the opposition's mistaken belief, and in furtherance of MCI's limited recognition of the competition that has developed and that continues to develop, certain interstate access market areas are highly competitive. As evidenced by the presence of existing CAP fiber rings, as well as other competitive alternatives, no barriers to entry exist, as some commentors might have us otherwise believe. Moreover, regulatory rules and policies that are now in the implementation phase encourage even more widespread competitive entry into all aspects of the interstate access business, and financially strong alternative providers stand ready to take full advantage of these procompetitive policies. In addition, strategic alliances are being formed today among major telecommunications, cable TV and wireless providers to take full advantage of the Commission's open entry policies. Appendix 1 provides a discussion regarding the impacts of competition within the marketplace.

B. Parties Who Deny The Existence Of Access Competition Are Merely Engaging In Delay Tactics Designed To Perpetuate Asymmetric Regulation That Acts In Their Favor.

It is interesting to note that it is the LECs' competitors who argue most vehemently against allowing LECs to compete in an effective manner. Telecommunications users on the other hand desire that LECs be allowed to respond to this

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[17] Id., p. 4.

developing competition so that consumers may realize the benefits of a competitive marketplace. The ad Hoc Telecommunications Users Committee states that

> [c]ertainly, the interests of the Committee's members would not be well served if the incumbent providers of exchange access and local exchange services were prevented from responding to competition from competitive access providers (CAPs) and others, and the Committee has no reason to wish that LECs be hobbled with needless regulation. Accordingly, the Committee does not oppose considered revisions to the access charge rules designed to allow LECs sufficient pricing flexibility and the ability to offer new and innovative services in response to competition, so long as pricing flexibility is carefully keyed to actual levels of emerging competition.[18]

Yet, opponents to the USTA proposal argue that competition is incipient and that competitors are fledgling entities who do not possess the financial resources presumed to be possessed by LECs. Quite to the contrary, competition has sufficiently matured in many market areas to warrant the actions proposed by USTA. Furthermore, competitors represent well established, diverse entities capable of matching or even exceeding the financial resources of the incumbent providers.

For example, MFS describes itself as "the largest provider of local competitive access telecommunications services in the United States. As an integrated telecommunications company, MFS provides a wide range of high quality voice, data and other enhanced services and systems specifically designed to meet the

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[18] Ad Hoc, p. 2.

requirements of communications-intensive business and government end users. MFS operates fiber optic networks in major metropolitan business centers throughout the United States, and offers telecommunications, information management and computer connectivity services in competition with the LECs and other entities."[19] Hyperion comments that it "is a competitive access provider ("CAP"). Hyperion provides access services that compete with certain services offered by the local exchange carriers ("LECS") that USTA represents."[20]

At the same time, these firms claim that the LECs are a monopoly and that LEC competition is imaginary or nonexistent. Clearly, these large, integrated suppliers of telecommunications services "want to have their cake and eat it too." As so called "nondominant" carriers, MFS, Hyperion and others enjoy the opportunity to make tariff filings that cannot be rejected or suspended, rate ranges with no bottom or top price, and unfettered ICB pricing. At the same time, these LEC competitors wish to maintain this advantage by denying LECs a regulatory structure that measures marketplace competition and matches regulation appropriately. The Commission should see through these self-serving arguments and move forward with USTA's Petition.

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[19] MFS, p. 2.

[20] Hyperion, p. 2.

C. The Need For Facilitating New Services

MCI attacks the USTA Petition's proposed treatment of new services. The USTA proposal states that any new plan "should facilitate reliance on market incentives to develop new offerings"[21] and that Price Cap sharing is inconsistent with objectives to promote the introduction of new services and technologies because it does not recognize the risk involved in introducing a new service.[22] Contrary to MCI's allegation, the USTA proposal has merit and is supported by economic theory. A discussion of these principles is attached as Appendix 2.

IV. USTA'S PROPOSED CRITERIA FOR ADDITIONAL LEC PRICING FLEXIBILITY ARE ENTIRELY APPROPRIATE.

Several parties attack the criteria advanced by USTA for determining how and when LECs should receive additional pricing flexibility in the new telecommunications market that exists today.[23] However, looking at the world realistically (rather than through the skewed view of the LECs' competitors), these criteria are eminently reasonable and appropriate.

A. Pricing Reforms Should Recognize The Varied Competitive Nature Of Different Market Areas.

Under the current regulatory regime, all market areas, regardless of their competitive differences, are regulated under essentially the same rules and regulations. While the Commission

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[21] USTA Petition, p. 15.

[22] Id., p. 37.

[23] See, e.g., Ad Hoc, pp. 9-11.

has recently allowed wire centers possessing similar cost characteristics to be grouped together for price management purposes, the Commission's remaining rules and regulations continue to be applied ubiquitously to all wire centers. Furthermore, the Commission's rules and regulations do not recognize that other market characteristics must also be considered for the purposes of regulatory oversight. Rules and regulations beneficial to non-competitive markets are not necessarily appropriate for competitive markets.

MCI recognizes the importance of regulation tailored to the competitive nature of the market. It states that "where a company enjoys a monopoly for all of its services, the rates for those services can be set more or less arbitrarily, and the focus of the regulator is properly on ensuring both that customers are not subjected to artificially high rates and that the total amount of revenue recovered by the utility is reasonable . . . where effectively competitive markets exist for all of a LEC's services, the incentive to engage in anticompetitive pricing is strong, but the ability to manipulate prices is absent."[24]

MCI would have the Commission believe that "[i]t is where the firm faces both monopoly and potentially competitive markets that both the incentive and the ability to manipulate prices in an anticompetitive fashion are present. Thus, as competitive entry occurs, or even as the possibility of competitive entry arises, and

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[24] MCI, pp. 4-5.

the transition to a competitive market has begun, the need for cost studies and price regulation is increased, not decreased."[25]

MCI is wrong. In transitionally competitive markets regulation should ensure that service providers cannot use non-competitive service price increases to offset competitive service price reductions. However this does not mean that "increased" oversight is necessary. MCI fails to acknowledge that since competition is beginning to evolve in these market areas, the presumed barriers to entry are non-existent and therefore the incumbent provider will be deterred from supra-competitive pricing tactics. In addition, the use of indices and bands will also preclude price shifts and prevent LECs from adopting predatory pricing strategies.

The importance of MCI's argument, however, should be recognized. Varied market characteristics mandate a variance in the way in which individual market areas are regulated. This is consistent with the USTA proposal. While the Commission's recently established zone density pricing plan was a much needed and deserved step in this direction, it still falls short of affording LECs reasonable ability to develop competitive responses as competition expands. Furthermore, this mechanism does not recognize other valid market indicators which can be utilized to assess and demonstrate the competitive nature of individual market areas. Most importantly, it does not adjust the level of

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[25] Id., p. 5.

regulation to the level of competition and it does not resolve the deficiencies of the current interstate access charge plan.

B. No Credible Arguments Have Been Presented As To Why Market Area Competition Should Not Be Identified And Appropriate Regulation Established Commensurately.

Commentors offered several thoughts on the thresholds proposed by USTA for movement of services into TMAs and CMAs. Ad Hoc asserts that "the proposed criteria for establishing TMAs and CMAs would accord LECs excessive pricing flexibility which could stifle the relatively modest emerging levels of exchange access and local exchange competition which exist today."[26] AT&T argues that "USTA's test is plainly inadequate, both as a means of determining whether a particular access market is competitive, and for assessing the state of access competition generally."[27] Naturally, the LECs' competitors (which include IXCs, cable companies and the CAPs) would set thresholds at levels that are nearly impossible to attain and would shield them from LEC competition for many years. The proposed criteria provide a reasonable assessment of market area competitiveness.

The level of the competitive threshold is not nearly as important as implementing regulation that takes market competitiveness into account -- something missing altogether in today's regulatory paradigm. The USTA Petition would add this critical dimension and bring some balance to a regulatory process

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[26] Ad Hoc, p. 7.

[27] AT&T, p. 6.

that is currently tilted away from the LECs. At the same time, customers would finally begin to realize the benefits of full competition.

C. Full Local Exchange Competition Is Not A Required Precursor To Access Reform.

Notwithstanding CompTel's comments, access reform should not await full-fledged local competition, any more than interexchange regulatory reform awaited (or even considered) access competition.[28] CompTel's comments[29] appear to be focused on the erroneous perception that switched access service consists of a single, integrated service. Quite to the contrary, CAPs and IXCs have used special access to displace switched access for years. The Commission has recognized the potential for competitive entry into the separate and distinct functions that comprise this service. The fact that there is little competition for LEC switching in no way reduces the competition that LECs already face for switched and special transport.[30] If the Commission were to do what CompTel suggests and hold off reforming the access rules until local competition was "prevalent," the LECs would be devastated in

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[28] CompTel claims at p. 3 that "true switched access competition is impossible without effective local service competition."

[29] CompTel at pp. 3, 9-14.

[30] The USTA proposal, by segmenting market by degree of competition, can easily accommodate the fact that limited switching competition exists while the transport connected to these switches is intensely competitive. The dynamic nature of the USTA proposal ensures that regulatory oversight changes as market conditions change.

virtually all urban markets for access transport services. Clearly, widespread duplicative construction of local exchange loops is not essential to realizing competition in the switched access market. The Commission should not be misled by CompTel's comments.

V. UNIVERSAL SERVICE ISSUES

Several commentors raise universal service issues associated with contribution and assistance, subsidies, support mechanisms, who should receive funding and how it should be funded.[31] The USTA Petition recognizes, and MFS agrees, that the time is now for the Commission to "begin establishing a clear policy direction on the issue of universal service."[32] SWBT welcomes a re-examination of universal service goals and the methods for achieving those goals. It is of utmost importance for regulators and the industry to determine how best to ensure the continuance of universal service objectives in a competitive environment.

SWBT strongly disagrees with MFS, however, that this re-examination must take place prior to access reform. As SWBT has already indicated, the Commission cannot afford to delay access reform. SWBT recommends that a comprehensive examination of all universal service issues be initiated to develop clear policies and objectives for maintaining universal service goals and that this

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[31] See, for example, Hyperion, p. 13; MFS, p. 2; AT&T, p. 3; CompTel, p. 4; Sprint, p. 1; Ad Hoc, p. 3.

[32] MFS, p. 2.

initiative could occur simultaneously with access reform. There is nothing in USTA's access reform proposal that would jeopardize the Commission's universal service objectives. In fact, no commentor has presented any credible evidence that, by reforming the pricing and structure framework for the regulation of access services, the Commission will be impairing any universal service goal. The Commission can ensure that consumer benefits derived from access reform will not be delayed and that competitive policies will not adversely impact universal service objectives.

Almost four years ago to the day, when MFS filed its original Petition for Rulemaking seeking lower interconnection rates and central office collocation from LECs, MFS apparently felt that access charge and universal service reform should and could be moved ahead briskly. It stated then that the industry

> will need to craft a system of rate regulation that not only will foster increased competition but also will be equitable and balanced for all affected parties, including local exchange carriers and residential and small business users. . . . MFS intends to submit to the Commission in the near future a detailed proposal which revisits the current access charge scheme. . . .[33]

Of course, at that point, MFS had not yet received what it wanted from the Commission, and thus it was quite willing to admit to the need for access charge and universal service reform, and even to present a "detailed proposal" for both "in the near future."

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[33] November 14, 1989 MFS Petition for Rulemaking, p. 19 (emphasis added).